

1 KAMALA D. HARRIS
Attorney General of California
2 DIANN SOKOLOFF
Supervising Deputy Attorney General
3 GREGORY TUSS
Deputy Attorney General
4 State Bar No. 200659
1515 Clay Street, 20th Floor
5 P.O. Box 70550
Oakland, CA 94612-0550
6 Telephone: (510) 622-2143
Facsimile: (510) 622-2270
7 *Attorneys for Complainant*

8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. **2012-749**

12 **KELLI LYNN LOSOWSKI**
a.k.a. Kelli Lowsowski,
13 a.k.a. Kelly Losowski
20800 Homestead Road, #66B
14 Cupertino, CA 95014

ACCUSATION

15 **Registered Nurse No. 702403**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Complainant Louise R. Bailey, M.Ed., R.N., brings this Accusation solely in her
21 official capacity as the Interim Executive Officer of the Board of Registered Nursing (Board),
22 Department of Consumer Affairs.

23 2. On or about April 20, 2007, the Board issued Registered Nurse License number
24 702403 to Respondent Kelli Lynn Losowski, a.k.a. Kelli Lowsowski, a.k.a. Kelly Losowski. This
25 Registered Nurse License was in full force and effect at all times relevant to the charges brought
26 in this Accusation and will expire on February 28, 2013, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 118, subdivision (b), provides:

“The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.”

5. Section 2750 provides:

“Every certificate holder or licensee, including licensees holding temporary licenses, or licensees holding licenses placed in an inactive status, may be disciplined as provided in this article [Article 3 of the Nursing Practice Act (Bus. & Prof Code, § 2700 et seq.)]. As used in this article, “license” includes certificate, registration, or any other authorization to engage in practice regulated by this chapter. The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the board shall have all the powers granted therein.”

6. Section 2759 provides:

“The board shall discipline the holder of any license, whose default has been entered or who has been heard by the board and found guilty, by any of the following methods:

“(a) Suspending judgment.

“(b) Placing him upon probation.

“(c) Suspending his right to practice nursing for a period not exceeding one year.

“(d) Revoking his license.

“(e) Taking such other action in relation to disciplining him as the board in its discretion may deem proper.”

1 himself or herself, any other person, or the public or to the extent that such use impairs his or her
2 ability to conduct with safety to the public the practice authorized by his or her license.

3 “(c) Be convicted of a criminal offense involving the prescription, consumption, or
4 self-administration of any of the substances described in subdivisions (a) and (b) of this section,
5 or the possession of, or falsification of a record pertaining to, the substances described in
6 subdivision (a) of this section, in which event the record of the conviction is conclusive evidence
7 thereof.”

8 11. California Code of Regulations, title 16, section 1444 provides, in pertinent part:

9 “A conviction or act shall be considered to be substantially related to the qualifications,
10 functions or duties of a registered nurse if to a substantial degree it evidences the present or
11 potential unfitness of a registered nurse to practice in a manner consistent with the public health,
12 safety, or welfare.”

13 COST RECOVERY

14 12. Section 125.3, subdivision (a), provides, in pertinent part:

15 “Except as otherwise provided by law, in any order issued in resolution of a disciplinary
16 proceeding before any board within the department . . . upon request of the entity bringing the
17 proceedings, the administrative law judge may direct a licensee found to have committed a
18 violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the
19 investigation and enforcement of the case.”

20 FACTUAL BACKGROUND

21 13. On or about January 10, 2010, at about 10:37 p.m., Respondent was driving her
22 vehicle in Mountain View, California. She hit the rear of another vehicle and then drove away.
23 The other driver described the person and the vehicle that hit him to the police. A patrol officer
24 saw Respondent at a stop light in the left turn lane and found that she and her vehicle matched the
25 descriptions. When the light changed she remained stopped for approximately four seconds
26 before she turned left. She made a wide turn, almost hitting the curb, then swerved and nearly hit
27 another vehicle in oncoming traffic.

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1 14. When the officer turned on his lights and siren, Respondent stopped in the middle of
2 the road. Respondent said she had been drinking beer and was coming from a bar in Mountain
3 View, but denied being in an accident. There was a strong odor of an alcoholic beverage on her
4 breath, her speech was thick and slurred, and her eyes were red and watery. When she got out of
5 her car for the officer to continue his investigation, she had an unsteady gait and had to brace
6 against her vehicle as she lost her balance.

7 15. Respondent submitted to field sobriety test (FST) procedures. During the FSTs, she
8 displayed horizontal nystagmus, or involuntary eye movement. She was unable to complete the
9 "one leg stand" and did not follow the instructions for the "line walk."

10 16. Based on the description of Respondent and her vehicle from the hit-and-run
11 accident, her driving pattern, objective signs of intoxication, and poor performance on the FST
12 procedures, the officer arrested her for violating Vehicle Code sections 23152, subdivision (a)
13 (driving under the influence of an alcoholic beverage) and 20002, subdivision (a) (failure to stop
14 after an accident). Respondent reluctantly agreed to submit to a blood test for alcohol, but later
15 changed her mind and refused any tests.

16 17. The district attorney charged Respondent with violating Vehicle Code sections
17 23152, subdivision (a), and 20002, subdivision (a), with a special allegation pursuant to Vehicle
18 Code section 23577, subdivision (a) (willful refusal to submit to or complete chemical test).

19 18. On or about April 4, 2011, in the Superior Court of California, Santa Clara County,
20 case number B1045657, entitled *The People of the State of California vs. Kelli Lowsowski, a.k.a.*
21 *Kelly Losowski*, Respondent pled no contest to a misdemeanor violation of Vehicle Code section
22 23152, subdivision (a), and admitted the special allegation pursuant to Vehicle Code section
23 23577, subdivision (a). The other count was dismissed. Sentencing was suspended, and
24 Respondent was placed on summary probation for a period of three years, which included, but
25 was not limited to, the following terms: enrolling in a nine-month driving under the influence
26 program, referral for determination of restitution, and 12 days' incarceration.

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FIRST CAUSE FOR DISCIPLINE
Criminal Conviction
(Bus. & Prof. Code, §§ 490, subd. (a); 2761, subd. (f))

19. The allegations of paragraph 18 are realleged and incorporated by reference as if fully set forth.

20. Respondent has subjected her Registered Nurse License to disciplinary action under sections 490, subdivision (a), and 2761, subdivision (f), for a criminal conviction. As set forth in paragraph 18 above, she was convicted of a misdemeanor violation of Vehicle Code section 23152, subdivision (a).

SECOND CAUSE FOR DISCIPLINE
Unprofessional Conduct – Use of Alcoholic Beverage in a Manner Dangerous or Injurious to Self or Public
(Bus. & Prof. Code, §§ 2761, subd. (a); 2762, subd. (b))

21. The allegations of paragraphs 13-18 are hereby realleged and incorporated by reference as if fully set forth

22. Respondent has subjected her Registered Nurse license to disciplinary action under section 2761, subdivision (a), for unprofessional conduct, as defined by section 2762, subdivision (b). As set forth in paragraphs 13-18 above, she used alcoholic beverages in a manner dangerous or injurious to herself or the public by driving while intoxicated.

THIRD CAUSE FOR DISCIPLINE
Unprofessional Conduct – Criminal Conviction
(Bus. & Prof. Code, §§ 2761, subd. (a); 2762, subd. (c))

23. The allegations of paragraphs 13-18 are hereby realleged and incorporated by reference as if fully set forth

24. Respondent has subjected her Registered Nurse license to disciplinary action under section 2761, subdivision (a), for unprofessional conduct, as defined by section 2762, subdivision (c). As set forth in paragraphs 13-18 above, she was convicted of a misdemeanor violation of Vehicle Code section 23152, subdivision (a), for driving while intoxicated.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License number 702403, issued to Kelli Lynn Losowski, a.k.a. Kelli Lowsowski, a.k.a. Kelly Losowski;
2. Ordering Kelli Lynn Losowski, a.k.a. Kelli Lowsowski, a.k.a. Kelly Losowski, to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and
3. Taking such other and further action as deemed necessary and proper.

DATED:

June 15, 2012



for LOUISE R. BAILEY, M.ED., R.N.
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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